

## **REMARKS**

### **Rejection of Claims 32 and 22 Under the Judicially Created Doctrine of Obviousness-Type Double Patenting**

In the Office Action mailed August 28, 2002, the Examiner rejected claims 32 and 33 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,182,392 B1.

Applicant respectfully submits that the Examiner's rejection of claims 32 and 33 under the judicially created doctrine of obviousness-type double patenting is overcome in view of the terminal disclaimer submitted herewith.

In view thereof, Applicant respectfully requests that the Examiner withdraw the rejection of claims 32 and 33 under the judicially created doctrine of obviousness-type double patenting.

### **Rejection of Claims 32 and 33 Under 35 U.S.C. § 103**

Claims 32 and 33 were rejected under 35 U.S.C. § 103 as being unpatentable over U.S. Patent No. 4,828,209 issued to Niemi (Niemi '209) in view of U.S. Patent No. 4,170,618 issued to Adams (Adams '618). This rejection is respectfully traversed.

Niemi '209 discloses a vase form for artificial flowers. The vase form includes a sidewall and a bottom which define an open top and an open back. The side wall includes opposite side portions connected by a front portion. The vase form is fastened to a pegboard or a perforated display board (FIG. 8) by a combination of L-shaped hooks.

Adams '618 discloses a decorative container for holding a flower pot. The decorative container is a sheet of thermoplastic material formed into a shape to contain the

flower pot. The decorative container also functions to collect moisture draining from a watered plant inside the flower pot.

Claims 32 and 33 are rewritten below for the Examiner's convenience:

32. A floral grouping display assembly, comprising:

a wall;

a floral grouping having a bloom end and a stem end; and

a sheet of material wrapped about at least a portion of the stem end of the floral grouping so that the bloom end of the floral grouping is exposed, the sheet of material being releasably connected to the wall to display the floral grouping on the wall so that substantially the entire length of the wrapped floral grouping is visibly displayed on the wall.

33. A floral grouping display assembly, comprising:

a wall;

a floral grouping having a bloom end and a stem end; and

a transparent sheet of material formed to define a container, the floral grouping disposed in the container with the bloom end of the floral grouping exposed, the sheet of material being releasably connected to the wall to display the floral grouping on the wall so that substantially the entire length of the floral grouping is visibly displayed on the wall.

As to claim 32, the Examiner contends that it would have been obvious to one of ordinary skill in the art to modify the display of Niemi '209 by placing the floral display in the wrap of Adams '618 before placement in the vase of Niemi '209 to stop leaking of water when the floral display is of live plants. The Examiner further contends that the length of the wrapped floral grouping would be visibly displayed on the wall when the vase and wrap are made of transparent material. The Examiner also argues that plastic vases and wraps of transparent material are notoriously well known in the container arts.

Applicant respectfully submits that there is no motivation or suggestion to combine the vase form of Niemi '209 with the flower pot container of Adams '618 so as to form the assembly defined by Applicant's claim 32. In order to properly combine references for an obviousness-type rejection, there must be an incentive, suggestion or teaching supporting the combination. *ACS Hospital Systems v. Montefiore Hospital Systems*, 732 F.2d 1572, 221 USPQ 929, 933 (Fed. Cir. 1984). In part, claim 32 is directed to a floral grouping display assembly having a wall, a floral grouping, and a sheet of material wrapped around a portion of the floral grouping. The floral grouping is releasably attached to the wall in claims 32 and 33. There is no suggestion in the nature of the floral grouping display assembly and there is no teaching in Niemi '209 or Adams '618 that a wrapped floral grouping should be placed inside the vase form of Niemi '209 and then the vase form should be releasably attached to a wall.

Furthermore, Adams '618 teaches a container configured for a flower pot, not individual flowers. Thus, one could not generally wrap a floral grouping in a container configured to hold a flower pot. The geometry of the container would generally not be suitable to retain a floral grouping within the wrapping, even if the container happens to be the

correct geometry for one particular floral grouping. A reasonable combination of Adams '618 and Niemi '209 would seem to be a wrapped flower pot of Adams '618 placed inside the vase form of Niemi '209. Clearly, claim 32 would not be obvious with respect to such a combination.

As to claim 33, the Examiner argues that it would have been obvious to place the floral display in the container of Adams '618 before placement in the vase form of Niemi '209 in order to stop leaking of water when the floral display is of live plants. This argument might have merit if claim 33 included the limitation that the container formed by the sheet of material were intended to hold water. However, claim 33 contains no such limitation.

The container of Adams '618 is designed to hold a flower pot, which is itself designed to hold water in soil with drainage provided through a hole in the bottom. One would normally expect a flower pot to leak and the container of Adams '618 provides a way to contain the leak. Thus, there is no motivation to combine the container of Adams '618 with the display assembly of Niemi '209 and it would not have been obvious to make such a combination.

The Examiner also argues that the length of the wrapped floral grouping would be visibly displayed on the wall when the vase and the wrap are made of transparent plastic. However, part of the motivation for the invention of Adams '618 is to provide an aesthetically pleasing container for a red clay tile flower pot. Adams '618, col. 1, lines 26-38. Adams '618 specifically states that "a red clay tile flower pot is not that pleasing esthetically." *Id.* at lines 30-31. Placing the red tile clay flower pot in a transparent plastic wrap would only frustrate one of the purposes for having the flower pot container.

In addition, there is nothing in the disclosure of Niemi '209 that suggests that the vase form should be made of a transparent plastic. The vase form of Niemi '209 may hold artificial flowers or other items of merchandise. Niemi ' 209, col. 1, lines 5-8. The floral grouping of the present invention may include fresh flowers, artificial flowers, fresh plants, artificial plants, floral material, secondary plants, or secondary ornamentation that adds to the aesthetics of the plants. Application, paragraph 28.

Although the floral grouping of claim 33 may include other items, the floral grouping display assembly of claim 33 is particularly advantageous for fresh flowers because the entire length of the floral grouping is visibly displayed on the wall. It is a particular advantage for fresh flowers because fresh flowers are perishable goods. Displaying the flower along the entire length enables a customer to assess the condition of the fresh flowers prior to a purchase.

Thus, there is more of an incentive to use transparent materials for the floral grouping of claim 33 than for the artificial flower vase of Niemi '209. The use of transparent wrapper for the flower pot of Adams '618 frustrates the purpose of the flower pot. As a result, claim 33 would not have been obvious with respect to a reasonable combination of Adams '618 and Niemi '209.

### **Summary**

It is respectfully submitted that this application is in condition for allowance for the reasons stated above. Therefore, it is requested that the Examiner reconsider each and every rejection as applicable to the claims now pending in the application and pass such claims to issue.

This amendment is intended to be a complete response to the Office Action mailed  
August 28, 2002.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Nicholas D. Rouse". The signature is fluid and cursive, with a long horizontal stroke at the end.

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